

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

City of Moline, Rock Island County, Illinois,
Petitioner,

v.

State of Illinois, Department of Transportation, The Burlington
Northern and Santa Fe Railway Company and Iowa Interstate
Railroad Co.,
Respondents.

T03-0096

Petition seeking an order from the Illinois Commerce
Commission permanently closing and barricading the grade
crossing located at the intersection of the tracks of The
Burlington Northern and Santa Fe Railway Company and Fifth
Street in the City of Moline, Rock Island County, Illinois, Milepost
250.61, DPT No. 604320V and for an order granting the City of
Moline, Rock Island County, Illinois the sum of \$30,000 from the
Grade Crossing Protection Fund of the Motor Fuel Tax Law as
incentive for the City's agreement to close the subject grade
crossing.

ORDER

By the Commission:

On October 2, 2003, the City of Moline, Rock Island County, Illinois ("the City") filed with the Illinois Commerce Commission ("Commission") the above-captioned verified petition naming as Respondents the State of Illinois, Department of Transportation ("IDOT"); The Burlington Northern and Santa Fe Railway Company ("BNSF"); and the Iowa Interstate Railroad, Ltd. ("IIRR").

Pursuant to notice, the matter came on for hearing before a duly authorized Administrative Law Judge of the Commission at the Commission's Chicago office on November 13, 2003. Publication, giving notice of the proposed crossing closure and the date and place of the hearing was made in a newspaper of general circulation in Rock Island County. The publication was sponsored by Henry Humphries, Railroad Section, Bureau of Transportation of the Commission and entered into evidence. BNSF and IIRR were represented by counsel. Testimony and evidence in support of the petition was provided by Scott Robert Hinton, City Engineer of Moline.

A proposed order was served upon the parties on or about December 9, 2003. No briefs on exceptions were filed.

The City, in its petition and in its direct case, proposes that safety will be improved by closure of the Fifth Street crossing. BNSF maintains one track at the crossing upon which there are two train trips daily. IRR has abandoned and removed its track. Average daily traffic ("ADT") was reported to be 300. None of the automobile traffic will be inconvenienced since there is a crossing one block, approximately three hundred feet (300') east of Fifth Street. Fifth Street is approximately three blocks long and dead ends at the railroad tracks. It is brick with an asphalt overlay and is in poor condition. It is approximately twenty-four feet (24') wide, has no curbs, gutter, or storm sewers. The crossing is located in an area that was heavily industrial. As industry left the area, the crossing became moribund.

The alternative crossing at 6th Street has an ADT of 1500 and can easily accommodate the traffic diverted from 5th Street. It is a hard surface, all weather roadway. BNSF will be responsible for the removal of the existing warning devices at the crossing and the crossing surface. On the north side of the track, the City will beautify the area and provide access to parking. The City will be responsible for the barricade on the north side of the tracks. Any road surface on the south side of the track will be removed.

The City in its petition requested incentive funds for the voluntary closing of a crossing. Effective September 20, 2000, the Commission approved use of the Grade Crossing Protection Fund of the Motor Fuel Tax Law ("GCPF") for incentive grants to local highway agencies in return for closure of public grade crossings. The size of the incentive payment is determined by the ADT and ranges from \$25,000 for an ADT of less than 250, \$30,000 for an ADT of 251 to 500, and \$35,000 for an ADT in excess of 500. If the incentive payment is approved, the funds are transferred by IDOT directly into the community's Motor Fuel Tax account. The community is permitted to use the money only for the purposes ADOT allows for Motor Fuel Tax funds. The City therefore requests \$30,000 as an appropriate incentive for closure of this crossing.

The Commission, having considered the evidence of record, is of the opinion and finds that:

- (1) the City of Moline, Rock Island County, Illinois is a political subdivision organized and existing under and by virtue of the laws of the State of Illinois;
- (2) the State of Illinois, Department of Transportation is a department of the State of Illinois, organized and existing under and by virtue of the laws of the State of Illinois;

- (3) The Burlington Northern and Santa Fe Railway Company is a Delaware corporation with a principal place of business in Fort Worth, Texas, engaged in the transportation of persons and/or property by rail in the State of Illinois and as such is a rail carrier as defined by the Illinois Commercial Transportation Law ("Law");
- (4) Iowa Interstate Railroad, Ltd. is engaged in the transportation of persons and/or property by rail in the State of Illinois and as such is a rail carrier as defined by the Illinois Commercial Transportation Law ("Law");
- (5) the recital of facts set forth in the prefatory portion of this order are supported by evidence are supported by evidence of record and are hereby adopted as findings of fact;
- (6) public convenience and necessity do not require the retention of the railroad crossing at Milepost 250.61, DOT Number 604 320V intersecting Fifth Street in the City of Moline, Rock Island, Illinois and public safety requires that said crossing be closed, barricaded, and abolished;
- (7) it is fair and reasonable that the entire cost of closing, barricading, and abolishing the north side of the crossing be borne by the City of Moline, Rock Island County, Illinois; it is fair and reasonable that the entire cost of beautifying the north side of the crossing and providing access to parking be borne by the City; it is fair and reasonable that the responsibility for future maintenance of the Iowa Interstate Railroad, Ltd.'s right-of-way be borne by the City;
- (8) it is fair and reasonable that the entire cost of closing, barricading, and abolishing the south side of the crossing; removing the warning devices; and removing the crossing surface be borne by The Burlington Northern and Santa Fe Railway Company;
- (9) it is fair and reasonable that an incentive payment of \$30,000 be made by the Grade Crossing Protection Fund of the Motor Fuel Tax Law be made to the City for the voluntary closing of the subject crossing;
- (10) the closure of the subject crossing should be completed within six months of the date of this Order;
- (11) Chapter 625 ILCS 5/18c-1701 and 5/18c-1704 of the Law require each "person" as defined by 5/18c-1104 to comply with every regulation or order of the Commission; these sections further provide that any person who fails to comply with a Commission regulation or

order shall forfeit to the State not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense; while the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the City of Moline, Rock Island County, Illinois be, and it is hereby required and directed to close, barricade, and abolish the crossing at Fifth Street, Milepost 250.61, DOT Number 604 320V in the City of Moline, Rock Island County, Illinois.

IT IS FURTHER ORDERED that the cost for the closure of the north side of the crossing and beautification thereof shall be the responsibility of the City.

IT IS FURTHER ORDERED that the cost for removal of the crossing surface and the warning devices on the south side of the crossing shall be the responsibility of The Burlington Northern and Santa Fe Railway Company.

IT IS FURTHER ORDERED that the cost for the future maintenance of the Iowa Interstate Railroad Ltd.'s right-of-way shall be the responsibility of the City.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall transfer from the Grade Crossing Protection Fund an amount not to exceed \$30,000 to the Motor Fuel Tax account of the City of Moline, Rock Island County, Illinois.

IT IS FURTHER ORDERED that the City of Moline may use the funds granted in return for the voluntary closing of the Fifth Street crossing, only for the purposes IDOT allows for Motor Fuel Tax funds.

IT IS FURTHER ORDERED that the closure of the subject crossing shall be completed within six months of the date of this Order. Barricades shall be in place prior to the removal of the crossing surface and warning devices.

IT IS FURTHER ORDERED that any person making a Request for Extension of Time up to thirty (30) days to complete a project ordered by the Commission must file a request with the Director of Processing no later than fourteen (14) days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting an extension of time which exceeds thirty (30) days must file a Petition for Supplemental Order with the Director of Processing no later than twenty-one (21) days in advance of

the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

IT IS FURTHER ORDERED that Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Administrative Law Judge reserves the right to deny Requests for Extension of Time and Petitions for Supplemental Orders if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that in accordance with Chapter 625 ILCS 5/18c-2201 and 5/18c-2206 of the Illinois Commercial Transportation Law, this is a final decision subject to the Administrative Review Law.

IT IS FURTHER ORDERED that the City of Moline, Rock Island County, Illinois shall submit to the Director of Processing, Bureau of Transportation of the Commission within five (5) days of the completion of the work herein required of it, 6180.71 – U.S. DOT Crossing Inventory Form as a notice of said completion.

IT IS FURTHER ORDERED that in accordance with Chapter 625 ILCS 5/18c-2201 and 5/18c-2206 of the Illinois Commercial Transportation Law, this is a final order subject to the Administrative Review Law.

By Order of the Commission this 3rd day of March 2004.

JUDGE	<i>SBT</i>
SECTION CHIEF	
ORDERS SUPERVISOR	<i>[Signature]</i>

Edward C. Husley ²

Chairman